

**REMARKS**

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Upon entry of this Amendment Under Rule 116, claims 1, 7, 14, 15 are canceled, independent claims 25, 27 and dependent claim 26 are newly added, and claims 2-6, 8-13, and 16-24 are currently amended. Accordingly, claims 2-6, 8-13 and 16-27 are left pending.

In the last Office Action, claims 1-5, 7-12, 14, 15, 17 and 18 were rejected under 35 USC 102 (e) as being anticipated by U.S. Patent No. 6,249,836 to Downs *et al.* (hereinafter "Downs"). The rejection is respectfully traversed in view of the following discussion.

Downs provides remote, distributed processing of tasks using a wide area network. Referring to Applicant's independent claims 25 and 27, Downs fails to provide numerous claimed recitations. In Applicants' claims 25 and 27, a broker module maintains a plurality of peer computers capable of processing a job request and a plurality of available sub-broker modules. The broker selects an available peer computer qualified to process the job request, and a sub-broker module that is capable of scheduling and monitoring the job request on the available peer computer. The selected sub-broker module schedules and monitors the job request, and when completed, indicates the availability of the peer computer to the broker module.

Downs fails to provide the foregoing claimed features and functions. Specifically, nowhere are the foregoing tasks performed by execution of modules in the reference, and nowhere are modules provided that have the relationships and features associated with Applicant's claimed broker module and sub-broker modules. In Downs, the tasks which are the only items that could conceivably be construed as Applicant's job request, are handled by a resource requester 12, which is recited as a client that needs computing or processing resources, not Applicant's claimed broker module. c.3, ll.19-21.

Downs also provides a resource allocator 14, which is simply a server that assigns a particular task to one of a plurality of resource providers. c.3, ll.23-26. Notably, the resource allocator is not a module, either Applicant's claimed broker or sub-broker module, whose function is not tied to any particular computer, such as Downs' server.

Downs includes a request unit 30 that receives a request from a resource requester, checks the resource table to determine availability of the resource, and notifies the resource requester that the resource allocator 14 can handle the request. An allocation unit 36 has software to receive the job definition from the resource requester 12, assign a resource to the task based on a resource table, and update the table to reflect the allocation of resources for a particular task. Subsequently, a dispatch agent 38 includes software, which under the direction of the allocation unit 36, transfers the task to the resource. c.3, 1.64-c.4, 1.18.

Downs fails to disclose Applicant's claim recitation of selecting an available computer that is *qualified* to process the job request. In Downs, a simple table lookup is performed to determine which resources are available to handle the task, with no teaching provided to determine whether a particular resource is qualified to handle the type of task.

Downs does not provide Applicant's claimed sub-broker modules, or any other software entities for that matter, which receive the job request at a pre-selected peer computer, and perform the functions of both scheduling and monitoring the job request. As suggested above, in Downs the resource allocation functions of program 28 are principally performed by request unit 30, allocation unit 36, dispatch agent 38 and application unit 40, which communicate with resource table 32. Downs' software functions are within a server, not provided to a broker module interacting with autonomous sub-broker modules, whose actions are independent of the where the modules are executed. Accordingly, this rejection should be withdrawn.

Claims 6, 16 were rejected under 35 USC 103(a) as being unpatentable over Downs in view of U.S. Publication No. 2002/0083183 to Pujare *et al.* (hereinafter "Pujare"). Applicant respectfully traverses this rejection.

Pujare is used to teach the missing feature of the sub-broker modules being a patch queue module, a pre-release module, a command module or a libc module. Pujare teaches an application conversion system for converting locally installable applications into a data set, for streaming the like as object code across a network. There is no motivation provided in either reference for providing Applicant's claimed module features as sub-broker modules in a system where job requests are dynamically assigned, and specifically where the sub-broker modules provide scheduling and monitoring functions for the dynamically allocated job requests. As these claims depend from the independent claims, the claims are also patentable in view of the above-noted arguments in reference to the independent claims. Accordingly, this rejection should be

withdrawn.

Claims 13, 21-23 were rejected under 35 USC 103(a) as being unpatentable over Downs in view of U.S. Patent No. 6,070,191 to Narendran *et al.* (hereinafter "Narendran"). Applicant respectfully traverses this rejection.

Narendran provides a data distribution technique for web access that is load balanced and comprises a server system for processing client requests received over a communication network. No disclosure or motivation is found that provides Applicant's claimed recitation of assigning a single job request to two or more peer computers, and certainly not in the broker and sub-broker environment specifically recited in the foregoing claims. In addition, the rejection presumes that in the claim recitations, a single job request may be divided into multiple job requests to load balance the system. In actuality, there may be many reasons for this feature, including that job request may have such specific processing requirements that a single peer computer may not have the proper functionality to handle it. This dynamic allocation feature of the claimed invention is not found in either reference. Also, as these claims depend from the independent claims, the claims are also patentable in view of the above-noted arguments in reference to the independent claims. Accordingly, this rejection should be withdrawn.

Claim 19 was rejected under 35 USC 103(a) as being unpatentable over Downs in view of U.S. Patent No. 6,725,253 to Okano *et al.* (hereinafter "Okana"). Okana provides a load balancing system having primary, secondary and backup apparatuses. The reference is used in the rejection to provide the missing feature of any of the peer computers serving as the broker. However, neither reference, whether taken separately or together, provide the motivation to combine independent assignability of the broker in a system having the claim recitations of claims 27, 17, from which claim 19 now depends. The motivation suggested in the Office Action is based on hindsight garnered from Applicant's own invention, and is not supported by any suggestion to combine found in the references. In addition, as this claim depends from independent claim 27, the claim is also patentable in view of the above-noted arguments in reference to such independent claim. Accordingly, this rejection should be withdrawn.

Claim 24 was rejected under 35 USC 103(a) as being unpatentable over Downs in view of Narendran and further in view of Okano. In addition, claim 20 was rejected under 35 USC 103(a) as being unpatentable over Downs in view of U.S. Patent No. 5,862,138 to Liu (hereinafter "Liu"). As these claims depend from independent claims, the claims are patentable

in view of the above-noted arguments in reference to the independent claims. Accordingly, this rejection should be withdrawn.

Since all objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,

**LOWE HAUPTMAN & BERNER, LLP**

A handwritten signature in black ink, reading "Kenneth M. Berner". The signature is written in a cursive, flowing style.

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